IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.6402 OF 1996

Shri Chandrakant B. Dhumal
c/o. Bharatiya Mazdoor Sangh
185, Shaniwar Peth, Pune - 30 ... Petitioner

V/s.

1. M/s.Advani Oerlikon Limited
Equipment Plant, Chinchwad
Pune

2. Shri D.M. Khodade
Presiding Officer, 1st Labour Court
Pune ... Respondents

Mr.S.M. Dharap for Petitioner
Mr.L.M. Nerlekar for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGMENT RESERVED ON: **SEPTEMBER 7, 2004**

JUDGMENT DELIVERED ON: **OCTOBER 5, 2004**

JUDGMENT:

. This Petition challenges the award of the Labour Court rejecting the Reference for reinstatement with continuity of service and full backwages.

2. The facts involved in the present case are as follows:

The Petitioner was employed as an Electrician with Respondent No.1 company since 1.11.1976. He claimed to be an active member of the Union representing the

workmen employed with Respondent-Company. On 4.2.1989, he was issued a chargesheet wherein several acts of misconduct had been alleged against him. In his reply to the chargesheet, the petitioner denied all the allegations made against him. As his explanation was not found to be satisfactory, an enquiry was conducted against him. Several witnesses were examined at the enquiry. The enquiry officer submitted his report on 16.7.1989 holding the petitioner guilty of three out of the 15 charges levelled against him. The Enquiry Officer held that it was established that the Petitioner had conducted a meeting of workers near the canteen on 28.1.1989 between 1.50 pm and 2.10 pm without the permission of the authorities. The Enquiry Officer further came to the conclusion that the Petitioner had used abusive and indecent language against the respondent company and its officials. A further charge which was proved against the Petitioner was that he had conducted a meeting of workers after 4.30 pm on 1.2.1989 and that the participants had used indecent and abusive language towards the company by shouting slogans and that he had organised *dharnas* within the radius of 500 metres from the company premises by obstructing the factory gate, thereby committing a breach of orders of the Industrial Court. On 31.7.1990, the Petitioner was dismissed from service as the respondent company accepted the enquiry report submitted and took punitive

action against the Petitioner. The petitioner, therefore, raised an industrial dispute which was referred for adjudication in Reference (IDA) No.26 of 1991.

3. The enquiry held against the petitioner was found to be fair and proper by the Labour Court as the Petitioner did not challenge the fairness of the enquiry. On 15.4.1996, by award part II, the Labour Court dismissed the Reference by concluding that the findings recorded by the enquiry officer were not perverse. The Labour Court also held that the misconduct having been proved, the punishment imposed on the Petitioner, of dismissal, was not disproportionate. It is this award which has been challenged in the present petition.

4. Mr.Dharap, learned Advocate for the Petitioner, submits that the Labour Court has erred in arriving at the conclusion that the findings of the Enquiry Officer were not perverse. He submits that there is no misconduct proved against the Petitioner and, therefore, the order of dismissal is illegal. He urges that the entire action against the Petitioner has been instituted in order to victimise him since he was an active member of the trade union. He submits that the Petitioner was actively associated in the trade union activities

including the enrolling new members for the union and in agitating their grievances with the management. On the misconducts which have been proved, Mr.Dharap submits that the charge of using abusive and indecent language against company officials cannot be said to have been proved. He submits that the language which the Petitioner has used during the course of agitation cannot be considered as either indecent or abusive. The slogans shouted by the Petitioner and other workmen did not amount to use of an indecent or abusive language against the management representatives. As regards the charge of the Petitioner having conducted a meeting of workers near the canteen on 28.1.1989, he submits that the Petitioner had only discussed certain issues with some of the workers during their tea time between 1.50pm and 2.10pm and had requested them to attend the gate meeting to be held later in the day. The learned advocate urges that since no meeting was held by the Petitioner during this period a request for permission to hold such a meeting did not arise. The third charge of committing a breach of the order of the Industrial Court in complaint (ULP) NO.48 of 1989 by which the workers had been restrained from agitating within a radius of 500 metres from the factory gate, by holding meetings, shouting slogans and organising *dharnas* is sought to be explained away by the learned Advocate by submitting that the order of the Industrial Court was

not served upon the Petitioner. The learned Advocate submits that in the contempt proceedings filed in the Industrial Court being Miscellaneous Application (ULP) No.5 of 1989 for violating the order passed by it, the Industrial Court has observed that the Petitioner had not been served with a copy of the order of the Industrial Court and therefore, the charge levelled against the Petitioner cannot be said to be proved. In any event, submits the learned Advocate, assuming the charges have been proved against the Petitioner, the punishment of dismissal is not warranted. According to him, the Labour Court ought to have exercised its powers under section 11A of the Industrial Disputes Act, 1947 and held that the punishment of dismissal was disproportionate and ought to have imposed a lesser punishment.

5. On the other hand, Mr.Nerlekar, appearing for Respondent No.1, submits that the findings of the enquiry officer cannot be said to be perverse as the enquiry officer had applied his mind to the evidence recorded before him and found that only three charges had been proved against the Petitioner out of the 15 allegations made against him. He submits that there was sufficient material on record to prove the charges against the Petitioner and, therefore, neither the enquiry officer nor the Labour Court could be faulted in

recording the finding that the Petitioner was guilty of misconduct. The learned advocate urges that the punishment imposed on the Petitioner has been imposed only after considering his past service record and the gravity of the misconduct proved against him and therefore, the punishment was justified. By way of abundant caution, Mr.Nerlekar submits that in the event it is found that the findings of the enquiry officer are perverse, the respondent company should be permitted to lead evidence before the Labour Court. He relies on the judgment of the Apex Court in the case of *Bharat Forge Company Ltd. v/s. A.B. Zodge & Anr.,* **1996 II CLR 345**. Mr.Nerlekar further relies on the judgment in the case of *New Shorrock Mills v/s. Maheshbhai T. Rao,* **1997 I CLR 13** that the punishment should not be interfered with. The learned Advocate then submits that allegation of victimisation made by the Petitioner cannot be accepted as this allegation must be properly proved. He buttresses his argument with the case decided by the Apex Court in *Bharat Iron Works v/s. Brahmabatt,* **1976 1 LLN 19.** On the question of payment of backwages, the learned Advocate submits that the petitioner has not approached the Court with clean hands as he has not disclosed the amount that he earned while working with the trade union and running about 35 unions. By relying on the case in *Indiana Engineering Works (Bom.) Pvt. Ltd. v/s. The Presiding Officer,* **1995 II CLR 890 Bom,**

the learned Advocate points out that it was for the Petitioner to disclose the amount that he was earning after dismissal and not having done so, the Petitioner was not entitled to any wages for the intervening period. He buttresses his arguments by relying on the case in *P.K. Kasilingam v/s. PSG College of Techonology,* **1981 I LLJ 358 (SC)** and *Bisra Stone Lime Co. Ltd. v/s. Their Workmen,* **1992 I LLN 999 (Orissa).** The learned Advocate submits in the alternative that reinstatement with or without backwages should not be granted to the Petitioner in view of the strained relations between the parties and instead some reasonable compensation in lieu of the reinstatement be granted. He relies on the judgment in the case of *Workmen v/s. Bharat Fritz Werner P. Limited,* **(1990) 3 SCC 565** and *Vijay Khuswaha v/s. University of Allahabad,* **1994 LIC 925.**

6. Both the learned Advocates have taken me through the enquiry report as well as the award of the Labour Court in great detail. The submission made by Mr.Dharap that the language used by the Petitioner while shouting slogans cannot be considered as abusive deserves to be accepted. The language used by the Petitioner while shouting slogans is not such that it would amount to abusive language nor could it be said to be indecent. The language is not such that could be considered to be

conscionable but is used regularly during strikes. May be some of the slogans were in poor taste but this does not prove that they were either indecent or abusive. Therefore, these findings of the Enquiry Officer and the Labour Court in respect of this charge are certainly perverse and cannot be accepted.

7. The Labour Court has concurred with the finding of the Enquiry Officer that the Petitioner had entered into the factory premises unauthorisedly and had held a meeting of the workers near the canteen between 1.50pm to 2.10pm. The charge against the Petitioner is that he entered the company, collected the workers near the canteen, held a meeting of these workers unauthorizedly, and threatened the workers who did not submit to the diktat of the Union. The enquiry officer has found that the witnesses examined at the enquiry had categorically stated that a meeting had been conducted. The Labour Court also has come to the conclusion that the Petitioner had entered the premises and had held a meeting unauthorisedly. The Labour court while considering the charge has come to the conclusion that the Petitioner had entered the premises unauthorisedly and instigated the workmen to participate in the dharna. However, the charge against the Petitioner was not of entering the premises unauthorisedly. The charge levelled against him was of holding a meeting

unauthorisedly near the canteen without the permission of the management. It has been established that the workers had gathered around the Petitioner near the canteen during their tea-break. However, whether this could be termed as a meeting when only a few workers were talking with the Petitioner is to be considered. The word "meeting" has been defined in Chambers Dictionary as under:

> meeting - coming face to face for friendly or hostile ends; an interview; an assembly; an organized assembly for the transaction of business; an assembly for religious worship, esp (in England) of Dissenters; a place of meeting; a junction."

8. The word "meeting" mentioned in the chargesheet has been used loosely. A discussion with the workers has been termed as a meeting. In my view, perhaps the Petitioner was extorting the workers to attend the meeting which was scheduled at the factory gate later in the afternoon. This by itself would not constitute a meeting held without permission of the management. Therefore, it cannot be said that the misconduct of holding a meeting without permission near the canteen was proved.

9. Coming now to the third charge which was proved against the Petitioner; the charge of committing breach of the order of the Industrial Court restraining the workman from holding demonstrations shouting slogans,

etc. at the entrance of the factory gate and within a radius of 500 metres from the factory premises. The Petitioner no doubt was exonerated in the contempt proceedings, having not received the notice as required. The Industrial Court while exonerating the Petitioner in the contempt proceedings has held that the copy of the Industrial Court's order had not been served on the office bearers of the union and, therefore, the alleged contempt of Court was not proved against any of the opponents in that case. The Petitioner was opponent No.3 in the Miscellaneous Application filed before the Industrial Court under section 48B of the MRTU & PULP Act. The Industrial Court has considered the evidence of the Petitioner recorded in that case and come to the conclusion that the Petitioner heard of the restraining order when it was served on him by the bailiff on 3.2.1989 and that he had no knowledge of the order on 1.2.1989, when the gate meeting was held. The Industrial Court has also held that assuming the copy of the order was served on the office bearers of the union, including the Petitioner, it was not proved that the Petitioner and other office bearers had committed contempt of Court. However, the enquiry officer has come to a different conclusion and has found that the Petitioner had in fact breached restraining orders of the Industrial Court and had, therefore, committed an act of misconduct by holding a gate meeting and by

shouting slogans organising dharnas within a radius of 500 metres from the company premises. Mr.Dharap, learned Advocate for the Petitioner, submits that admittedly a gate meeting was held outside the gate premises. Therefore, there cannot be a misconduct on the premises of the factory. In fact, according to the learned Advocate, permission was sought from the police to hold a meeting and if that be the case, the Petitioner could not be considered to have committed breach of the order of the Industrial Court. He relies on the judgment in the case of *Federation of Western India Cine Employees V/s. Filmalaya Pvt. Ltd.,* **1981 II LLJ 393** in support of his submission that a civil Court cannot have jurisdiction in such matters of holding meetings outside the factory premises.

10. The judgment in the case of *Federation of Western India Cine Employees* (supra) is not applicable to the facts and circumstances of the present case. In that case, this Court held that the trade unionism was a universally recognised phenomenon and the law recognises the legitimate activities of the trade union. In the facts and circumstances of that case, this Court held that a trade union is entitled to carry out its legitimate activities peacefully and, therefore, per se, slogan shouting or demonstrations cannot be termed as unlawful and a blanket injunction cannot be granted. In

the present case, the Industrial Court was of the view that the order restraining the Petitioner and other office bearers as well as the workers from demonstrating, etc. in front of the factory gate, was not served on the Petitioner. However, the contempt jurisdiction has a very narrow compass and the service of the order must be proved strictly. It must be shown that the contemnor had knowledge of the order and that it was served on him. The Industrial Court found while deciding the contempt application that the service of the notice was not proved and assuming it had been served, there was no contempt committed by the Petitioner. The Enquiry Officer, not having the benefit of the order of the Industrial Court in the contempt proceedings, was of the view that the Petitioner was informed of the order by one of the officers of the company which had then been established in the evidence recorded by the enquiry officer. The enquiry officer also noted that the xerox copy of the order of the Industrial Court was displayed on the notice board and therefore, it was presumed that the Petitioner had knowledge of the proceedings in the Court. It appears that one of the witnesses for the management has deposed before the enquiry officer that the order was displayed outside the main gate as well. Contrary to this, there is evidence of witness for the Petitioner that no notice was displayed at the main gate. However, there is

evidence of some of the employees examined on behalf of the management that they were unable to move their vehicles out of the factory premises as the gate was blocked by workers staging dharna at the behest of the Petitioner. The Industrial Court was also impressed by these findings of the Enquiry Officer and has concurred with the Enquiry Officer that the Petitioner had committed the misconduct alleged against him.

11. When the Enquiry Officer submitted his report on 16.7.1989, the order of the Industrial Court in the Miscellaneous Application filed under 48B of the MRTU & PULP Act was not available. However, the Labour Court heard the Reference after the findings of the Industrial Court in the contempt proceedings were placed on record. The Labour court has taken the view that the Petitioner has staged a dharna which resulted in disturbing the functioning of the company. the Labour Court has held that there was a breach committed by the Petitioner of the order of the Industrial Court, restraining the workmen from obstructing the staff from holding meetings or staging dharnas within the radius of 500 metres from the premises of the company. The Labour Court has then recorded a finding that by staging dharna on 1.2.1989 the Petitioner had obstructed the staff members from discharging their duties and that although the employees had every right to agitate for their legal demands, this

could not be done without observing discipline within the premises of the employer and by resorting to violence and disturbing the daily routine. There is no allegation against the Petitioner that either he or the workmen on his instigation had resorted to any violence. The only allegation is that he had committed breach of the orders of the Industrial Court in Miscellaneous Application filed under section 48B of the MRTU & PULP Act.

12. In my view, when the Industrial Court had come to the conclusion that there was no breach committed nor was there any contempt committed by the Petitioner, the Labour Court was not right in coming to the conclusion that the enquiry officer's finding was not perverse. Furthermore, therefore, the findings of the Enquiry Officer and the Labour Court must be set aside.

13. The question now to be addressed is whether the Petitioner deserves to be reinstated in service and whether he is entitled to continuity of service with full backwages. On the question of backwages, there is evidence on record to indicate that the Petitioner was working on full time basis as an active member of the 35 trade unions. However, there is no evidence on record as to whether he was being paid any amount for the work carried out by him and if so, what was the amount.

Mr.Nerlekar relied on various judgments including *Indiana Engineering Works (Bom.) Pvt. Ltd.* (supra), *Om Prakash Goel v/s. HPTD Corp. Ltd.,* **1991 2 CLR 350** and *Bisra Stone Lime Co. Ltd.* (supra) to submit that full backwages need not be paid to an employee who does not disclose the amount he was earning while out of employment with the respondent-company. He also relies on the judgment in the case of *Bharat Forge Company Ltd.* (supra) and *Vijay Khuswaha* (supra) to submit that assuming there is no misconduct committed by the Petitioner, this was certainly not a case where reinstatement should be granted. According to the learned Advocate, the relations between the Petitioner and the Respondent-company are strained over the years and it would not serve any purpose by reinstating the petitioner with continuity of service and full backwages. He submits that at best the Petitioner would be entitled to compensation by placing reliance on various judgments as aforesaid.

14. Considering the evidence on record, I do not thing that this was a case where the misconduct had been proved. Therefore, the award must be set aside. However, I am not convinced that the Petitioner was dismissed on account of his trade union activities. There is no evidence to show that he was victimised. After a long lapse of over 14 years, according to me,

the appropriate relief to be granted to the Petitioner would be that of compensation in lieu of reinstatement and backwages. The Petitioner claims that he is entitled to an amount of Rs.14,67,950/- as backwages besides bonus, leave salary, etc. It would not be proper to saddle the company with this burden due to the delays in Court. The Petitioner is almost 54 years of age. No purpose would be served in reinstating him now especially as he is now an active worker in the trade union field and is engaged in the working of several trade unions. In my view, awarding compensation to the Petitioner would be the appropriate relief in the circumstances. The proper amount payable to the Petitioner would be Rs.6,50,000/- (Rupees Six lacs and fifty thousand only) which would include his claim for gratuity, etc. in full and final settlement of all his claims against the respondent-company excluding the Provident Fund dues if any. This amount of Rs.6,50,000/- shall be spread over the years of unemployment and the Petitioner would be entitled to relief under section 99 of the Income Tax Act.

15. Rule made absolute partly. The order of the Labour Court is set aside. The Petitioner is entitled to compensation of Rs.6,50,000/- (Rupees Six lacs and fifty thousand only), in full and final settlement of all his claims against the respondent-company, which

shall be paid to him within a period of eight weeks from today.

16. Writ Petition is disposed of accordingly.

17. Mr.Nerlekar prays for stay of this order. Stay granted for four weeks.

18. Certified copy expedited.